

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 303 of 1999

Between:

Smt. Chigurupalli Sarojinamma, W/o. late Satyanarayana,
R/o. Boddapalli, Ponduru(M),Srikakulam Dist.

..... PETITIONER

AND

- 1 The Govt. of A.P. rep.by Secretary to Govt. ,
Revenue (Assignments)Dept., Secretariat,
Hyderabad.
- 2 The commissioner of Land Revenue, Govt. of A.P.
Hyderabad.
- 3 The Dist. Collector,
Srikakulam Dist. Srikakulam.
- 4 The Mandal Revenue Officer,
Ponduru(M),Srikakulam Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more in the nature of writ of Certiorari calling for the records connected with G.O.Ms.No.811 Revenue(ASN.I) Deptt., dt.22.10.1998 of the 1st respondent which confirms the proceedings of the second respondent in Procs.No.BCW-5/90 dt.4.8.1994 and the proceedings of the Joint Collector, Srikakulam, in Rc.No.2331/86 dt.18.4.1990 and quash all the proceedings as being illegal, contrary to the assignment policy and the rules thereunder of the Govt. violative of Art.14&21 of the constitution of India apart from against the principles of the natural justice, and consequently confirm the assignment of land to an extent of Ac.0-68 cents in S.No.219/4 vide D.Form Patta No.DC179/1394 dt.24.5.1985 and Ac.0-92 cents in S.No.206 vide D.Form patta No.8/1395 dt.25.07.1985 totalling Ac.1-60 cents Boddepalli(V), Ponduru(M), Srikakulam Dist. in favour of the petitioner.

Counsel for the Petitioner:MR.J.VENUGOPAL RAO

Counsel for the Respondents: GP FOR ASSIGNMENT

The Court made the following :

ORDER:

The petitioner's husband, who claims to be participated in freedom struggle, made an application to Mandal Revenue Officer (MRO) for assignment of land in S.Nos.219/4 and 206 of Bondepalli Village, Pouduru Mandal in Srikakulam District. After conducting *suo motu* enquiry the MRO granted D-form patta to a total extent of Acs.1.60 (Acs.0.68 in S.No.219/4 and Acs.0.92 in S.No.206) in the year 1985. Since then the petitioner's husband, and after his death, the petitioner herein are allegedly in possession and enjoyment of the said land. In the year 1989 as disputes arose in assignment of land, the Joint Collector, Srikakulam, issued a show cause notice dt.19.6.1989 to petitioner's husband stating that the land assigned is a tank bed land and asking him why D-form patta granted to him should not be cancelled. Petitioner's husband filed explanation on 11.7.1989. The Joint Collector held that the land assigned is tank bed land and canceled the pattas. Aggrieved by the same, petitioner filed appeal before the Commissioner of Land Revenue, at Hyderabad who initially granted stay and subsequently dismissed the appeal. Questioning the same, petitioner preferred revision before Government of Andhra Pradesh. The Government by impugned order in G.O.Ms.No.811, dt.22.10.1998 dismissed the revision. Hence, the Writ Petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Assignment.

In THE WATER USERS ASSOCIATION, THIMMAYA GARI PALLE CHERUVU TANK v. GOVERNMENT OF ANDHRA PRADESH (W.P.No.20323 of 2000, dt.6.2.2002) after referring to paragraph (4) of BSO 15 as well as decisions of the Supreme Court in VELLORE CITIZENS' WELFARE FORUM v. UNION OF INDIA, MEHTA M.C. v. UNION OF INDIA, RURAL LITIGATION AND ENTITLEMENT KENDRA v. STATE OF U.P., SUBHASH KUMAR v. STATE OF BIHAR, and HINCH LAL TIWARI v. KAMALA DEVI and a Division Bench judgment of this Court in T. RAMAKRISHNA RAO v. HUDA, I laid down as under:

The submission of the learned Additional Advocate General that the proviso to BSO 15(4) permits the assignment of land for agricultural purpose if the land whose assignment is prohibited is not required presently is without any substance. The proviso mentions two categories of lands indicated at BSO 15(4)(ii)(g),(j), (k), and (m). The categories of land

mentioned in BSO 15(4)(ii)(e) is conspicuous by its absence. Further, the categories of lands indicated in BSO 15(4)(ii)(a) refers to proamboke lands reserved for depressed classes or for any public purpose. The land in question in respect of which proposals are afoot is classified in the revenue records as tank poramboke. It squarely falls within the category of lands mentioned in BSO 15(4)(ii)(a), even if it is foreshore of tank bed. To my mind, this is the reason why on two occasions, the proposals were not accepted though lot of correspondence took place between the Revenue Department and Irrigation Department. Hence, **it must be held that any land reserved for any public purpose, cannot be assigned, whether or not it is a tank bed poramboke or foreshore tank bed....The life of a water body is not 100 years to commensurate with normal life span of a man. The water body plays an important in the ecology and environment besides having its economic purpose of providing water for irrigation and drinking purposes. Any use of land, which does not satisfy the principle of sustainable development, would be detrimental to a water body.**

(emphasis supplied)

Having regard to the judgment of the Supreme Court in HINCH LAL TIWARI v. KAMALA DEVI (supra), I also laid down that revenue authorities before granting any patta for agricultural purposes in respect of tank foreshore land within the vicinity of irrigation tank, must keep in view the environmental and ecological aspects which are inseparably connected with the water body. It may also be observed that private interest of landless poor persons to seek assignment of suitable land for cultivation must be subject to larger right of community and society to maintain ecological balance in the nature to avoid a doom.

The Writ Petition, for the above reasons, is dismissed. No costs.

(V.V.S.RAO, J)

26.7.2004

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary to Government,

Revenue (Assignments)Dept., Government of Andhra Pradesh,

Secretariat, Hyderabad.

2 The commissioner of Land Revenue, Govt. of A.P.
Hyderabad.

3 The Dist. Collector, Srikakulam Dist. Srikakulam.

4 The Mandal Revenue Officer, Ponduru Mandal, Srikakulam Dist.

5 2 CCs to GP for Assignment, High Court Bldgs., Hyderabad (OUT)

6 2 CD copies.